

\*\*E-Filed 10/15/2007\*\*

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

PHASE FORWARD INCORPORATED, a  
Delaware Corporation

Plaintiff,

v.

MARY NOEL ADAMS, individually and d/b/a  
PHASE FORWARD,

Defendants.

Case Number C 05-4232 JF (HRL)

ORDER<sup>1</sup> GRANTING LEAVE TO  
FILE A MOTION FOR  
RECONSIDERATION

Plaintiff Phase Forward Incorporated (“PFI”) seeks leave to file a motion for reconsideration of this Court’s July 24, 2007 Order (“Order”). In the Order, the Court granted summary judgment as to Count III of PFI’s amended complaint based on PFI’s representations to the Court that the claim could not be pursued under California law. Nine days after the issuance of the Order, the Ninth Circuit issued its opinion in *Jada Toys v. Mattel, Inc.*, 2007 WL 2199286 (9th Cir. August 2, 2007).

<sup>1</sup> This disposition is not designated for publication and may not be cited.

1 A motion for leave to file a motion for reconsideration is governed by Civ. L. R. 7-9,  
2 which requires that the party seeking leave to file a motion for reconsideration must show:

3 (1) That at the time of the motion for leave, a material difference in fact or  
4 law exists from that which was presented to the Court before entry of the  
5 interlocutory order for which reconsideration is sought. The party also must show  
6 that in the exercise of reasonable diligence the party applying for reconsideration  
7 did not know such fact or law at the time of the interlocutory order; or

8 (2) The emergence of new material facts or a change of law occurring  
9 after the time of such order; or

10 (3) A manifest failure by the Court to consider material facts or  
11 dispositive legal arguments which were presented to the Court before such  
12 interlocutory order.

13 PFI asserts that *Jada Toys* is an intervening change in law that affects the legal analysis of Count  
14 III. Accordingly, PFI's request for leave to file a motion for reconsideration is GRANTED. PFI  
15 shall file its motion for reconsideration on or before October 22, 2007. Defendant shall have  
16 twenty (20) days to respond. PFI shall have one week from the filing date of Defendant's  
17 response to file any reply. After receipt of the parties' papers, the Court will take the matter  
18 under submission without oral argument.

19 IT IS SO ORDERED.

20 DATED: October 15, 2007

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JEREMY FOGEL  
United States District Judge

1 This Order has been served upon the following persons:

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